IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH

Regular Second Appeal No.2214 of 1995
Date of Decision: 16.5.2007

Baj Singh, Ex-Constable ..Appellant

Versus

State of Punjab and another ..Respondents

CORAM: HON'BLE MR. JUSTICE H.S.BHALLA

Present:- Mr. H.S.Gill, Senior Advocate with
Mr. R.K.Dhiman, Advocate for the
Appellant.

Mr. Suvir Sehgal, Additional Advocate
General, Punjab.

H.S.BHALLA, J.

Appellant, who was working as a constable with the Punjab Police, lost his bread on 27.6.1990 when his services were dismissed. In order to revive his bread, he challenged the order of dismissal by filing a suit for declaration to the effect that the order is illegal, void and unconstitutional. He also challenged the entire inquiry proceedings. He was non-suited to the learned lower court and his suit was dismissed vide judgment and decree dated 5.6.1992 passed by Civil Judge (Junior Division), Jalandhar. Aggrieved against the judgment and decree passed by the learned lower court, he preferred an appeal before the learned lower appellate authority, which was also dismissed vide judgment and decree dated 18.4.1995 passed by Additional District Judge, Jalandhar. Finding no other alternative, he knocked at the door of this Court by filing the appeal in hand.

Facts required to be noticed for the disposal of this appeal are that appellant joined the Punjab Police as a constable on 1.12.1975 at Jalandhar and worked to the entire satisfaction of his superiors. According to him, in January, 1989, while he was posted at Police Post, Punia, under Police Station Shahkot, district Jalandhar, he was suddenly taken ill and was advised to be admitted in Civil Hospital, Jalandhar. He further averred that as the government doctors were on strike, the appellant took the medicines from private doctors and after he recovered, he reported for duty on 11.1.1989. Thereafter he was again taken ill on 19.1.1989 and after informing the incharge of the Police Post, appellant approached the doctor for treatment. He remained bed ridden till 19.2.1989 and on that day, he reported back for duty. Further, the appellant pleaded that he was taken ill on 22.2.1989 and was hospitalized. Having been declared fit, he reported back at Police Lines, Jalandhar on 8.3.1989. In view of his absence, as above, the appellant was treated as absent from duty for a total period of 44 days, 14 hours and an enquiry against him on these allegations was entrusted to Shri Davinder Singh, Inspector of Police, Station House Officer, Police station Cantt, Jalandhar. The inquiry officer returned a finding holding the appellant guilty of the charge of absence. On the basis of the inquiry report, the Senior Superintendent of Police, Jalandhar, after issuance of a show cause notice to the appellant, proposed the punishment of dismissal from service. Ultimately, after considering the reply to the proposed punishment, the

Senior Superintendent of Police, Jalandhar, vide his order dated 27.6.1990, passed the order of dismissal from service. It is further pleaded that the Senior Superintendent of Police did not give any opportunity of personal hearing before passing the impugned order and the impugned order has been passed in haste and was passed mechanically in contravention of rule 16.2 of the Punjab Police Rules, the length of service of the appellant and his claim towards pension was not taken into consideration by the competent authority before passing the impugned order and that the other police officials similarly placed were not awarded the punishment of dismissal.

The suit was contested by the respondent-State, wherein it was admitted that the appellant had joined the service as a constable on 1.12.1975. However, it was pleaded that the appellant was a habitual absentee for which he had been awarded major punishments and by taking other assertions raised in the plaint, it was finally prayed that the order of dismissal passed against the appellant is legal, valid and has been passed in accordance with the rules.

Appellant filed replication denying the assertions made in the written statement and reiterating the pleas taken by him in the plaint.

The learned lower court, after framing necessary issues and assessment of the evidence on record, dismissed the suit of the plaintiff-appellant as mentioned above and appeal filed by the appellant against that judgment and decree also met the same fate.

I have heard the learned counsel for the parties and have also gone through the entire record carefully.

It is well settled law that a suit challenging validity of departmental proceedings cannot be treated as an appeal from finding recorded in the departmental proceedings or punishment inflicted upon the government servant even if these are erroneous. If departmental proceedings are declared as null and void, only then the present appellant could obtain relief, which he has asked for in his suit. There is nothing on record to spell out that proper opportunity was not afforded to the appellant during the course of inquiry. Learned counsel for the appellant has not been able to point out any such denial, which contravenes mandatory provisions of law and rules of natural justice that it could vitiate the whole departmental trial. In fact, now reverting back to the facts of the case in hand, record clearly spells out that the appellant had frequently absented himself from duty and he, being the member of disciplined force, was required to maintain discipline in all respects and his frequent absence was not justified. I find from the order, Ex. P-4, that the punishing authority had applied its mind and held that the complained act of the appellant was of grave nature and amounted to gravest act of misconduct. The contention of the learned counsel for the appellant that order, Ex. P-4, is silent with regard to the fact that length of service of the appellant has not been considered, is again liable to be noticed only for the sake of rejection. There is no dispute with regard to the provisions contained in rule 16.2 of the Punjab

Police Rules, 1934, wherein it was mentioned that dismissal from service shall be awarded after finding that the act of misconduct of the delinquent official is of gravest nature or there is cumulative effect of continuous misconduct proving incorrigibility and complete unfit for police service. Order, Ex. P-4, is well reasoned order and perusal whereof reveals that the punishing authority, after taking into consideration frequent absence of the appellant from service, considering the inquiry report carefully and applying its mind to the facts of the case served a show cause notice upon the appellant. Appellant received a show cause notice, but no reply was filed by him. The Punishing Authority could address themselves with regard to the length of service of the delinquent either specifically or impliedly.

It is again admitted case of the appellant that no appeal was filed against him as permissible under the rules before the departmental appellate authority challenging order, Ex. P-4. Meaning thereby that, he did not exhaust departmental remedy available to him in this regard.

As already discussed above, appellant has acknowledged the receipt of the inquiry report and show cause notice, but he never appeared before the disciplinary authority and o reply was filed challenging the inquiry report and then again, no appeal was filed by him and he had been absenting from duty wilfully for a total period of 44 days and 14 hours and in such like circumstances, the point with regard to the length of service to be considered by the punishing authority was not

put forward before the appellate authority or the revisional authority and it is sought to be raised for the first time before this Court, therefore, to my mind, the appellant never raised the point with regard to the length of service and he now cannot be permitted to raise the same for the first time in this Court, particularly when he did not raise this point before the punishing authority by filing reply to the show cause notice or before the departmental appellate authority by filing an appeal against the order of dismissal. In such like circumstances, it cannot be said that the punishing authority was not alive to the provisions or rule 16.2 with regard to the gravity of misconduct of the appellant. As it is recorded in the order, Ex. P-4, that the appellant was habitual absentee and it was not desirable that he should continue in service. It appears that the punishing authority was of the view that the appellant was indulging in gravest type of misconduct. The Punishing Authority has categorically observed in the order that the appellant was not worthy of being continued in service on account of his frequent absence from duty. The charge having been proved, it cannot be said that the respondents had acted illegally in ordering his dismissal from service. The appellant was a member of disciplined force and his absence from duty was unbecoming of a member of such force. The members of the police force should attend duty, which they have been allocated and not absent themselves.

In view of the above discussion, I find no merit in the present Regular Second Appeal and it is dismissed with no

order as to costs. The findings recorded by the courts below are affirmed.

16.5.2007 (H.S.BHALLA)
VK JUDGE